

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

1:18cv0063 Erie
ELECTRONICALLY FILED

v.

ROBERT A. AARON, PATRICIA L.
AARON

Defendants.

MEMORANDUM ORDER ON MOTION TO STRIKE DEFAULT JUDGMENT AND
POSTPONE SALE OF PROPERTY ([Doc. 16](#))

Pending before the Court is the Motion to Strike Default Judgment and Postpone the Sale of Property filed *pro se* by Defendant Patricia Aaron (“Defendant” or “Mrs. Aaron”). ([Doc. 16](#)). Mrs. Aaron filed this Motion on the afternoon of November 13, 2018, the day before the Property, 5473 Georgetown Road, Franklin, Pennsylvania 16323, was to be sold at 10:00 A.M. (*Id.*). Defendant’s Motion to Strike Default Judgment and Postpone the Sale of Property ([Doc. 16](#)) is denied.

Motions seeking relief from a default judgment are appropriate under [Federal Rule of Civil Procedure 60\(b\)](#). That rule provides, “[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect.” [Fed.R.Civ.P. 60\(b\)](#).

On a motion to set aside a default judgment pursuant to Rule 60(b), courts must consider three factors: (1) “[w]hether the plaintiff will be prejudiced;” (2) “[w]hether the defendant has a meritorious defense;” and (3) “[w]hether culpable conduct of the defendant led to the default.”

Feliciano v. Reliant Tooling Co., 691 F.2d 653, 656 (3d Cir. 1982). In weighing these factors, courts must keep in mind that judgments on the merits are preferable to default judgments.

First, Plaintiff would be prejudiced by vacating the default judgment. Plaintiff has expended time and money advertising and preparing to sell the Property only to be faced with this last minute Motion that could have been filed weeks ago. Second, Defendant does not contend that she has a meritorious defense to Plaintiff's claim. Finally, and most importantly, it is the Defendants' culpable conduct that led to the default judgment being entered. Defendants had ample notice and opportunity to resolve this matter in the months leading up to the sale of the Property. Plaintiff United States of America filed its Complaint In Mortgage Foreclosure on February 25, 2018. ([Doc. 1](#)). Mrs. Aaron requested additional time to respond because she was "in process of receiving funds from her retirement." ([Doc. 4](#)). The Court granted the Defendants until April 25, 2018 to respond to the Complaint. ([Doc. 5](#)). The Defendants neither responded to the Complaint, nor requested additional time to respond, and a Default Judgment was entered in favor of Plaintiff and against Defendants on April 26, 2018. ([Doc. 7](#)). On May 16, 2018, Plaintiff filed a Praecipe for Writ of Execution, which was issued on May 16, 2018. ([Doc. 8](#)). Affidavits of Service were filed with the Court on September 18, 2018, that showed that on September 11, 2018, Defendants were served with Notices of Marshal's Sale of Real Estate and Writ of Execution. ([Doc. 9](#) and [Doc. 10](#)). Affidavits of Service were filed with the Court on October 10, 2018, that showed that on October 4, 2018, Defendants were served with Returns of Service (notices of sale of real estate). ([Doc. 12](#) and [Doc. 13](#)). Plaintiff's counsel filed of Return a Service indicating that on October 3, 2018, he mailed Defendants the Notice of Sale of Real Estate by regular first-class mail and by certified mail. ([Doc. 14](#)). On November 8, 2018, Plaintiff filed a Writ of Execution showing that on October 9, 2018, more than one month prior

to the November 14, 2018 sale of the property, a handbill of the November 14, 2018 sale of the 5473 Georgetown Road, Franklin, Pennsylvania 16323 was posted on the premises. ([Doc. 15](#)). Certainly the sale of the Defendants' home is unfortunate. But it is the consequence of their conduct, not the failure of Plaintiff to give them sufficient time.

SO ORDERED, this 14th day of November, 2018,

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All ECF Registered Counsel of Record

Patricia L. Aaron
5473 Georgetown Road
Franklin, Pennsylvania 16323

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